



## **FORT SAM HOUSTON CLAIMS OFFICE** **GUIDELINES FOR ARTICLE 139 INVESTIGATIONS**

### **1. REFERENCES:**

- a. AR 27-20, Claims.
- b. AR 15-6, Procedures for Investigating Officers and Boards of Officers.
- c. DA PAM 27-162, Claims
- d. The Uniform Code of Military Justice.

**2. INTRODUCTION:** Article 139 of the Uniform Code of Military Justice (UCMJ) provides administrative redress to individuals whose property has been willfully damaged or wrongfully taken by a member of the U.S. Armed Forces (Enclosure 1). Claims determined to be valid under this provision of the UCMJ are paid by Finance to the claimant directly from the responsible soldier's pay.

**3. DUTIES OF THE INVESTIGATING OFFICER:** The task of the investigating officer is to investigate the claimant's allegation and provide the Special Court Martial Convening Authority (SPCMCA) with sufficient facts to allow him to determine whether or not the claimant's property was willfully damaged or wrongfully taken.

a. The investigating officer will first notify the soldier that an Article 139 claim has been filed against him. The format for notification is shown in Chapter 9, DA PAM 27-162. The claims time line is at figure 9-2 and 9-3.

b. The approval authority may terminate Article 139 proceedings without findings if the soldier voluntarily makes full restitution to the claimant. Any amount paid to the claimant as partial restitution will be deducted from the amount assessed.

c. If the soldier does not make restitution, the investigating officer will conduct an informal investigation to determine whether or not the soldier's conduct appears to involve willful damage or a wrongful taking.

(1) **Willful Damage:** Willful damage is defined by Chapter 9, AR 27-20 as "...damage inflicted intentionally, knowingly, and purposefully without a justifiable excuse," and, "...showing a

reckless or wanton disregard for the property rights of others.” Chapter 9, DA PAM 27-162 explains that willful damage “is essentially vandalism—that is, damage or loss intentionally inflicted. Loss or damage caused by riotous, violent, or disorderly conduct...”

(2) Wrongful Taking: Chapter 9, AR 27-20 defines wrongful taking as “...any unauthorized taking or withholding of property with the intent to temporarily or permanently deprive the owner, or a person in lawful possession, of the property.” Chapter 9, DA PAM 27-162 notes that claims for property taken through forgery, larceny, embezzlement or fraud are generally cognizable as wrongful taking under Article 139.

d. NOTE--Wrongful taking may include writing bad checks. Chapter 9, DA PAM 27-162 states in part that “[a] claim that a soldier issued a worthless check would be cognizable (as a wrongful taking) if evidence establishes intent to defraud. Such intent may be inferred when the soldier fails to make good on a bad check within 5 working days after receiving notice of insufficient funds.”

e. Chapter 9, DA PAM 27-162 discusses numerous items of importance to Article 139 investigating officers including the standard of proof, valuation of the claimant’s loss, and the types of evidence which should be obtained during the investigation of an Article 139 claim.

**4. RESOURCES FOR INVESTIGATING OFFICERS:** When appointed as an investigating officer for an Article 139 claim, individuals should consult the following resources:

a. The Claims Judge Advocate (CJA). The CJA is located in the Claims Division, Office of the Garrison Staff Judge Advocate, Building 153, 1306 Stanley Road. The Claims Division may be reached by telephone at 221-1973 or by fax at 221-2550.

b. AR 27-20, Claims. The procedures for filing and processing Article 139 claims are outlined in detail in Chapter 9, AR 27-20 (Enclosure 2).

c. DA PAM 27-162, Claims. Practical guidance on Article 139 claims is contained in Chapter 9, DA PAM 27-162 (Enclosure 3).

d. AR 15-6, Procedures for Investigating Officers and Boards of Officers. Unless otherwise directed, officers investigating Article 139 claims will conduct informal investigations. The procedures for informal investigations are detailed in Chapter 4, AR 15-6 (Enclosure 4).

**5. TIME AND DOLLAR LIMITS:** Investigating officers should be aware that Chapter 9, AR 27-20 imposes the following time and dollar constraints on Article 139 claims:

a. Article 139 claims must be submitted to the SPCMCA within 90 days of the date that the incident occurred. The SPCMCA may waive this requirement if the claimant can show good cause for the delay.

b. Claims may be presented orally, but must be reduced to writing no later than 10 days after oral presentation and signed by the claimant.

c. Claimants must request a definite sum in U.S. dollars. The sum can be amended at a later date if necessary.

d. An Army officer who receives an Article 139 complaint must forward it to the SPCMCA having UCMJ jurisdiction over the alleged officer or offenders within two working days. The SPCMCA is a commander authorized to convene a special court-martial under the UCMJ and Army regulations, regardless of whether the exercise of such jurisdiction has been withheld.

e. The SPCMCA will appoint an investigating officer within 4 working days of receipt of the claim. The investigating officer then has 10 working days to submit findings and recommendations to the SPCMCA. If the claim does not appear cognizable, the SPCMCA may refer it for legal review within four days of receipt. If after legal review, the SPCMA determines that the claim is not cognizable, he or she may disapprove the claim without appointing an investigating officer.

f. The investigating officer should consult the CIA or claims attorney prior to the investigation and notify the soldier against whom the claim has been brought (figure 9-6). Refer to paragraph 9-7f, DA Pam 27-162 regarding guidelines for the investigation.

g. After reviewing the findings and recommendations of the investigating officer, the SPCMCA will make a final determination of the validity of the claim. The SPCMCA may assess up to \$5,000.00 from a soldier's pay for each valid claim. The General Court Martial Convening Authority (GCMCA) or designee may assess up to \$10,000.00. Only the Commander, U.S. Army Claims Service, has authority to approve a pay assessment in an amount greater than \$10,000.00.

**6. CLAIMS NOT COGNIZABLE:** Claims which are NOT compensable under Article 139 include the following:

a. Claims which do not involve willful damage or wrongful taking as defined by Chapter 9, AR 27-20.

b. Absent a waiver by the SPCMCA, claims not filed within the time limits prescribed by Chapter 9, AR-27-20.

c. Claims for damage or wrongful taking perpetrated by someone who is not a member of the U.S. Armed Forces.

d. Claims for taking that are the result of the breach of a fiduciary or contractual relationship (even if one or both of the parties to the contract are members of the Armed Forces).

- c. Claims for damages done inadvertently or thoughtlessly through simple or gross negligence.
- f. Claims for consequential damages, such as lost business earnings, carrying charges, interest, attorneys fees, inconvenience, telephone calls, or time spent preparing the claim.
- g. Claims for wrongful death.
- h. Claims for personal injury.
- i. Claims resulting from the conduct of Reserve component personnel who are not subject to the UCMJ at the time of the offense.
- j. Subrogated claims (e.g., the claims of insurers).

**7. WHAT TO DO WHEN THE INVESTIGATION IS COMPLETED:** Upon completion of the investigation, the investigating officer will take the following actions:

- a. Prepare written findings and recommendations regarding the claim.
- b. Submit findings and recommendations to the SPCMCA through the claims office on DA Form 1574 (can be found under AMEDD Electronics Forms Support System). Instructions for completing DA Form 1574 are contained in Chapter 3, AR 15-6 and paragraph 9-7f(5), DA PAM 27-162.
- c. Provide a copy of findings and recommendations concerning the claim to any soldier against whom assessment is recommended.
- d. The CJA or claims attorney will review the findings and recommendations for legal sufficiency within 5 working days.

**8. RECONSIDERATION AND APPEAL:** Article 139 does not provide the right to appeal the final decision of the SPCMCA or the GCMCA. While the claimant, or the soldier against whom an assessment is made may request a reconsideration from the SPCMCA or GCMCA, any such reconsideration will be strictly discretionary on the part of the SPCMCA or GCMCA.

**9. POINT OF CONTACT:** Further information concerning Article 139 claims may be obtained from the Fort Sam Houston Claims office at 221-1973/2161.

4 Encls

- 1. Article 139 UCMJ
- 2. Chap. 9, AR 27-20
- 3. Chap. 9, DA PAM 27-162
- 4. Chap. 4, AR 15-6

**ENCLOSURE 1**  
**Article 139 UCMJ**

# **THE UNIFORM CODE OF MILITARY JUSTICE**

## **ARTICLE 139**

### **Redress of Injuries to Property**

(a) Whenever a complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces, he may, under such regulations as the Secretary concerned may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purposes of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing office for the payment by him to the injured parties of the damages as assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved finding of the board.

**ENCLOSURE 2**  
**Chapter 9, AR 27-20**

# **Chapter 9**

## **Claims Cognizable Under Article 139, Uniform Code of Military Justice**

### **9-1. Statutory authority**

The authority for this chapter is Article 139, Uniform Code of Military Justice (UCMJ) ( 10 USC 939 ), which provides redress for property willfully damaged or destroyed, or wrongfully taken, by members of the Armed Forces of the United States.

### **9-2. Purpose**

This chapter sets forth the standards to apply and the procedures to follow in processing claims for the wrongful taking or willful damage or destruction of property by military members of the Department of the Army (DA). A proper claimant under this chapter includes any individual (whether civilian or military), a business, a charity, or a State or local government who owns, has an ownership interest in, or lawfully possesses property. When cognizable claims are presented against a unit because the individual offenders cannot be identified, this chapter sets forth the procedures for approval authorities to direct pay assessments, totaling the amount of damages sustained, against the unit members who were present at the scene and allocate individual liability in such proportion as is just under the circumstances. Claims cognizable under other claims statutes may be processed under this chapter.

### **9-3. Effect of disciplinary action, voluntary restitution, or contributory negligence**

*a. Disciplinary action.* Administrative action under Article 139, UCMJ, and this chapter is entirely separate and distinct from disciplinary action taken under other sections of the UCMJ or other administrative actions. Because action under both Article 139, UCMJ, and this chapter requires independent findings on issues other than guilt or innocence, a soldier's conviction or acquittal of claim related charges is not dispositive of liability under Article 139, UCMJ.

*b. Voluntary restitution.* The approval authority may terminate Article 139 proceedings without findings if the soldier voluntarily makes full restitution to the claimant.

*c. Contributory negligence.* A claim otherwise cognizable and meritorious is payable whether or not the claimant was negligent.

### **9-4. Claims cognizable**

Claims cognizable under Article 139, UCMJ, are limited to the following:

*a. Claims for property willfully damaged.* Willful damage is damage inflicted intentionally, knowingly, and purposefully without justifiable excuse, as distinguished from damage caused inadvertently or thoughtlessly in a negligent manner. Damage, loss, or destruction of property caused by riotous, violent, or disorderly acts or acts of depredation, or through conduct showing reckless or wanton disregard of the property rights of others, may be considered willful damage.

*b. Claims for property wrongfully taken.* A wrongful taking is any unauthorized taking or withholding of property, not involving the breach of a fiduciary or contractual relationship, with the intent to deprive, temporarily or permanently, the owner or person lawfully in possession of the property. Damage, loss, or destruction of property through larceny, forgery, embezzlement, fraud, misappropriation or similar offense may be considered wrongful taking.

#### **9-5. Claims not cognizable**

Claims not cognizable under Article 139, UCMJ, and this chapter, include the following:

- a.* Claims resulting from negligent acts.
- b.* Claims for personal injury, death, and theft of services.
- c.* Claims resulting from acts or omissions of military personnel acting within the scope of their employment.
- d.* Claims resulting from the conduct of Reserve Component personnel who are not subject to the UCMJ at the time of the offense.
- e.* Subrogated claims, including claims by insurers.
- f.* Claims involving only contractual and fiduciary disputes.
- g.* Claims for consequential damages.

#### **9-6. Limitations on assessments**

##### *a. Limitations on amount.*

(1) A special court-martial convening authority (SPCMCA) has authority to approve a pay assessment in an amount not to exceed \$5,000 on a single incident and to deny a claim in any amount.

(2) A general court-martial convening authority (GCMCA), or designee, has authority to approve a pay assessment in an amount not to exceed \$10,000 on a single incident and to deny a claim in any amount.

*(a)* If the GCMCA or designee determines that a claim exceeding \$10,000 for a single incident is meritorious, that officer will assess the soldier's pay in the amount of \$10,000 and forward the claim to the Commander, USARCS, with a recommendation to increase the assessment.

*(b)* If the head of the area claims office (ACO) (usually the GCMCA's SJA) decides that the GCMCA's final action under the provisions of Rule for Court-Martial 1107 in a court-martial arising out of the same incident would be compromised, that officer may forward the Article 139 claim to USARCS for action.

(3) Only TJAG, TAJAG, the Commander, USARCS, or designee has authority to approve single incident assessments in excess of \$10,000.

*b. Limitations on type of damages.* Property loss or damage assessments are limited to direct damages. This chapter does not provide redress for indirect, remote, or consequential damages.

#### **9-7. Procedure**

*a. Time limitations on submission of a claim.* A claim must be submitted within 90 days of the incident that gave rise to it, unless the SPCMCA acting on the claim determines there is good cause for delay.

*b. Form and presentment of a claim.* The claimant or authorized agent may present a claim orally or in writing. If presented orally, the claim must be reduced to writing, signed, and seek a definite sum in U.S. dollars within 10 days after oral presentment.

*c. Action upon receipt of a claim.* Any officer receiving a claim will forward it within two working days to the SPCMCA exercising jurisdiction over the soldier or soldiers against whom the claim is made. If the claim is made against soldiers under the jurisdiction of more than one convening authority who are under the same GCMCA, forward the claim to that GCMCA. That GCMCA will designate one SPCMCA to investigate and act on the claim as to all soldiers involved. If the claim is made against soldiers under the jurisdiction of more than one SPCMCA at different locations and not under the same GCMCA, forward the claim to the SPCMCA whose headquarters is located nearest the situs of the alleged incident. That SPCMCA will investigate and act on the claim as to all soldiers involved. If a claim is brought against a member of one of the other military services, forward the claim to the commander of the nearest major command of that service equivalent to a major Army command (MACOM).

*d. Action by the special court-martial convening authority.*

(1) If the claim appears to be cognizable, the SPCMCA will appoint an investigating officer (IO) within four working days of receipt of a claim. The IO will follow the procedures of this chapter supplemented by DA Pam 27-162, chapter 9, and AR 15-6, chapter 4, which applies to informal investigations. The SPCMCA may appoint the claims officer of a command (if the claims officer is a commissioned officer) as the IO.

(2) If the claim is not brought against a person who is a member of the Armed Forces of the United States at the time the claim is received, or if the claim does not appear otherwise cognizable under Article 139, UCMJ, the SPCMCA may refer it for legal review (see g, below) within four working days of receipt. If after legal review, the SPCMCA determines that the claim is not cognizable, final action may be taken disapproving the claim (see h, below) without appointing an IO.

*e. Expediting payment through Personnel Claims Act and Foreign Claims Act procedures.* When assessment action on a particular claim will be unduly delayed, the claims office may consider the claim under the Personnel Claims Act, 31 USC 3721, and chapter 11 of this regulation, or under the Foreign Claims Act, 10 USC 2734, and chapter 10 of this regulation, as long as it is otherwise cognizable under that authority. If the Article 139 claim is later successful, the claims office will inform the claimant of their

obligation to repay to the Government any overpayment received under these statutes (see para 11-3c(3)).

*f. Action by the investigating officer.* The IO will notify the soldier against whom the claim is made.

(1) If the soldier wishes to make voluntary restitution, the IO may, with the SPCMCA's concurrence, delay proceedings until the end of the next pay period to permit restitution. If the soldier makes payment to the claimant's full satisfaction, the SPCMCA will dismiss the claim.

(2) In the absence of full restitution, the IO will determine whether the claim is cognizable and meritorious under the provisions of Article 139, UCMJ, and this chapter, and the amount to be assessed against each offender. This amount will be reduced by any restitution the claimant accepts from an offender in partial satisfaction. Within 10 working days or such time as the SPCMCA may determine, the IO will submit written findings and recommendations to the SPCMCA.

(3) If the soldier is absent without leave and cannot be notified, a claims office may process the Article 139 claim in the soldier's absence. If an assessment is approved, forward a copy of the claim and memorandum authorizing pay assessment by transmittal letter to the servicing Defense Accounting Office (DAO) for offset against the soldier's pay. In the event the soldier is dropped from the rolls, the servicing DAO will forward the assessment documents to Commander, Defense Finance and Accounting Services, ATTN: Military Pay Operations, Indianapolis, Indiana 46249.

*g. Legal review.* The SPCMCA will refer the claim for legal review to the servicing legal office upon either completion of the IO's report or the SPCMCA's determination that the claim is not cognizable (see d(2), above).

(1) Within five working days or such time as the SPCMCA determines, that office will furnish a written opinion as to--

(a) Whether the claim is cognizable under the provisions of Article 139, UCMJ, and this chapter.

(b) Whether the findings and recommendations are supported by a preponderance of the evidence.

(c) Whether the investigation substantially complies with the procedural requirements of Article 139, UCMJ; this chapter; DA Pam 27-162, chapter 9; and AR 15-6, chapter 4.

(d) Whether the claim is clearly not cognizable (see d(2), above) and final denial action can be taken without appointing an IO.

(2) If the IO's recommended assessment does not exceed \$5,000, the CJA or claims attorney will, upon legal review, forward the claim to the SPCMCA for final action.

(3) If the IO's recommended assessment is more than \$5,000, the CJA or claims attorney will, upon legal review, forward the claims file to the head of the ACO, who will

also conduct a legal review within five working days (unless the ACO is the same office that conducted the legal review for the SPCMCA).

(a) If the recommended assessment does not exceed \$10,000, the head of the ACO will forward the claims file to the GCMCA for final action.

(b) If the recommended assessment exceeds \$10,000, the head of the ACO will forward the claims file to the GCMCA for approval of an assessment up to \$10,000 and for a recommendation of an additional assessment. The head of the ACO will then forward the claims file and the GCMCA's recommendation to the Commander, USARCS, for approval.

*h. Final action.* After consulting with the legal advisor, the approval authority will disapprove or approve the claim in an amount equal to, or less than, the amount recommended by the IO, up to the amount of their assessment limitation. The approval authority will notify the claimant and any soldier subject to that officer's jurisdiction, of the determination and the right to request reconsideration (see para 9-8). A copy of the IO's findings and recommendation will be enclosed with the notice. The approval authority will then suspend action on the claim for 10 working days pending receipt of a request for reconsideration, unless the approval authority determines that this delay will result in substantial injustice. If after this period the approval authority determines that an assessment is still warranted, the approval authority will direct the appropriate DAO to withhold such amount from the soldier's pay account (see para 9-6a). For any soldier not subject to the approval authority's jurisdiction, the approval authority will forward the claim to that commander who does exercise SPCMCA jurisdiction over the soldier for assessment.

*i. Assessment.* Subject to any limitations set forth in appropriate regulations, the servicing DAO will withhold the amount directed by the approval authority and pay it to the claimant. The assessment is not subject to appeal and is conclusive on any finance officer. If the servicing DAO cannot withhold the required amount because it does not have custody of the soldier's pay record, the record is missing, or the soldier is in a no pay due status, that office will promptly notify the approval authority of this fact in writing.

*j. Post settlement action.* After action on the claim is completed, the claims office servicing the command which took final action will retain the original claim file and forward a complete copy of the claim file to the SPCMCA.

*k. Remission of indebtedness.* 10 USC 4837 (d), which authorizes the remission and cancellation of indebtedness of an enlisted person to the United States or its instrumentalities, is not applicable and may not be used to remit and cancel indebtedness determined as a result of action under Article 139, UCMJ.

#### **9-8. Reconsideration**

*a. General.* Although Article 139, UCMJ, does not provide for a right of appeal, either the claimant or a soldier whose pay is assessed may request the approval authority (SPCMCA or GCMCA, depending on the amount assessed) or successor in command

to reconsider the action. Either party must submit such a request for reconsideration in writing and clearly state the factual or legal basis for the relief requested. The approval authority may direct that the matter be reinvestigated.

*b. Reconsideration by the original approval authority.* The original approval authority may reconsider the action at any time while holding that position, regardless of whether a soldier whose pay was assessed has been transferred. The original approval authority may modify the action if it was incorrect, subject to paragraph 9-8d. However, the approval authority should modify the action only because of fraud, substantial new evidence, errors in calculation, or mistake of law.

*c. Reconsideration by a successor in command.* Subject to paragraph 9-8d, a successor in command may modify an action only because of fraud, substantial new evidence, errors in calculation, or mistake of law apparent on the face of the record.

*d. Legal review and action.* Prior to modifying the original action, the approval authority will have the servicing claims office render a legal opinion and fully explain the basis for modification as part of the file. If a return of assessed pay is deemed appropriate, the approval authority should request the claimant to return the money, setting forth the basis for the request. There is no authority for repayment from appropriated funds.

*e. Disposition of files.* After completing action on reconsideration, the approval authority will forward the reconsideration action to the servicing claims office, which will then file the action per paragraph 9-7h.

#### **9-9. Additional claims judge advocate and claims attorney responsibilities**

In addition to the duties set forth in this chapter, the CJA or claims attorney is responsible for forwarding copies of completed Article 139 actions to USARCS, maintaining a log, monitoring the time requirements of pending Article 139 actions, and publicizing the Article 139 program to commanders, soldiers, and the community.

**ENCLOSURE 3**  
**Chapter 9, DA PAM 27-162**

# **Chapter 9**

## **Claims Under Article 139, Uniform Code of Military**

### **9-1. Statutory authority**

Article 139 of the Uniform Code of Military Justice ( UCMJ ) (10 USC 939), entitled "Redress of Injuries to Property," states that —

*a.* Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that a person's property has been wrongfully taken by members of the armed forces, the commanding officer may, under such regulations as the Secretary concerned may prescribe, convene a board to investigate the complaint. The board shall consist of one to three commissioned officers and, for the purpose of that investigation, has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

*b.* If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

### **9-2. Purpose**

*a. Scope.* Article 139, UCMJ, provides an administrative mechanism for assessing and paying restitution to the victims of certain types of criminal offenses committed by military personnel subject to the UCMJ (see para 9-4 ). Victims of these offenses often have no other adequate means of obtaining restitution. Article 139 ensures that a victim is compensated directly from the wrongdoer's military pay rather than from the United States Treasury. This serves both to implement the goals embodied in the Victim and Witness Protection Act of 1982 and to promote military discipline and protect the civil or military community from these types of disorders. Article 139 provides, however, an extraordinary administrative claims settlement authority. In essence, commanders are granted special powers normally reserved to the civil judicial authority. This authority must not be expanded beyond its strict limits; doing so could raise serious constitutional issues.

*b. Historical background.*

(1) Article 139 is descended from Article V of section IX of the British Articles of War of 1765, which was adopted by the Continental Army as Article XII of the American

Articles of War of 1775. Although the British provision afforded redress only for offenses committed against persons with whom soldiers were billeted and for "disturbing Fairs or Markets, or . . . committing any kind of Riot," Article XII was applied to all abuses or disorders in quarters or on a march.

(2) Article XII was designed to maintain order and discipline by securing indemnification for civilians who sustained damages from the kind of riotous or disorderly conduct punishable under the article that became Article 109 of the UCMJ after World War II. As the United States Army evolved, the article was amended to include soldiers as proper claimants and to permit claims for wrongful takings as well as for willful damage. At the same time, provisions that allowed compensation for bodily injury and made it a criminal offense for a commander to refuse to comply with the article's provisions fell away.

(3) Throughout its history, Article 139 has provided redress for the offenses of wasting, spoiling, or destroying nonmilitary property, presently proscribed by Article 109, UCMJ. Because disorderly soldiers often commit acts of depredation in groups, the article contains a unique provision allowing a commander to levy against the pay of all members of a unit who were present when damages were inflicted if an individual offender cannot be identified.

#### **9-3. Effect of disciplinary action, voluntary restitution, or contributory negligence**

*a. Disciplinary action.* Disciplinary action taken against an offender is entirely separate from action taken under Article 139. Under no circumstances should the approval authority or anyone acting for, or appointed by, the approval authority to act on the claim delay action under Article 139 pending resolution of disciplinary action. Because different evidence is admissible and a different standard of proof is applied, acquittal on the charges underlying an Article 139 claim is not, in itself, a basis for dismissal of the claim or for modification on reconsideration. Action under Article 139 requires an independent inquiry.

*b. Voluntary restitution.* The approval authority may terminate Article 139 proceedings without findings if the soldier voluntarily makes full restitution to the claimant. Any amount paid to the claimant as partial restitution will be deducted from the amount assessed.

*c. Contributory negligence.* An Article 139 claim is founded upon a criminal act. A claim otherwise cognizable and meritorious is payable whether or not the claimant was negligent.

#### **9-4. Claims cognizable**

Any individual (including civilians and soldiers), business entity, State, territorial or local government or non-profit organization may submit a claim under Article 139. An appropriated fund (APF) or non-appropriated fund (NAF) entity of the United States may not. The article provides compensation only for loss of, or damage to, real or personal property that has been willfully damaged or wrongfully taken by a member of the U.S. Armed Forces, to include active duty personnel, retired personnel against whom an Article 139 claim was brought while the offender was still serving on active

duty, and Reserve and National Guard personnel when their status subjects them to the UCMJ. Article 139 is not a system of general indemnification: claims for death or personal injury and subrogated claims (such as, claims by insurers) are not cognizable. Similarly, claims founded in negligence or founded in breach of a contractual or fiduciary relationship are also excluded. Finally, consequential damages such as loss of revenues or earnings, carrying charges, interest, attorneys' fees, inconvenience, telephone charges, or time spent preparing the claim are also not compensable (see AR 27-20, paras 9-5 and 9-7d).

*a. Willful damage.* Willful damage falls into two categories. The first category involves damage caused intentionally without justification. Such damage is essentially the result of vandalism. The second category involves riotous, violent, or disorderly acts, acts of depredation or acts showing a reckless and wanton disregard for the property rights of others. Loss or damage caused thoughtlessly or inadvertently by a soldier's negligent conduct is not covered. Only damage that is "incidental to violence against the person or the outgrowth of a breach of the peace" falls within the meaning of Article 139.

(1) A claim that a soldier accidentally broke a lamp during a drunken brawl is cognizable. Even though the soldier did not intend to break the lamp and the breaking alone may be construed as simple negligence, the soldier's conduct shows a reckless and wanton disregard for the property rights of others.

(2) A claim that a soldier drove a car at 80 miles per hour in a 55 miles per hour speed zone, crossed the center line and collided into an oncoming vehicle is not cognizable, absent proof that the soldier acted intentionally.

(3) A claim that a soldier randomly fired a weapon into the air and broke a window is cognizable because such an act shows a reckless and wanton disregard for the property rights of others.

*b. Wrongful takings.* A wrongful taking is essentially a theft — that is, an unauthorized taking or withholding of property with the intent to deprive the owner of either temporary or permanent possession. Claims for property taken through larceny, forgery, embezzlement, misappropriation, fraud or similar conduct are normally cognizable. Takings that involve a dispute over the conduct of a soldier acting as the claimant's agent, over the terms of a contract or over ownership of property are not cognizable unless the dispute is merely a cloak for an intent to steal. Article 139 is not a mechanism for the collection of debts, and the Army has no interest in mediating business disputes under the guise of preventing theft.

(1) A claim that a soldier borrowed a videocassette recorder (VCR) and did not return it on the promised date is not cognizable unless the soldier borrowed the VCR as a pretext and sold it or kept it permanently. This is evidence of an intent to steal.

(2) A claim that a soldier issued a worthless check and received property in return is cognizable if evidence establishes an intent to defraud. Such intent may be inferred when the soldier fails to make good on a bad check within five working days after receiving notice of insufficient funds, in the same way that a criminal intent to defraud

may be inferred under Article 123a, UCMJ, Making, drawing, or uttering check, draft, or order without sufficient funds.

(3) A claim that a soldier stole a check or credit card and used it to obtain items of value is cognizable.

#### **9-5. Claims not cognizable**

*a. Negligence.* Article 139 may not be used to hold a soldier liable for negligent acts. Negligence is the failure to use the level of care that a reasonably prudent person would use under the same or similar circumstances. Negligent conduct differs from conduct in which a soldier sees or should clearly see that his or her actions are likely to cause damage to property but blatantly disregards that risk and causes property damage. For example, if a soldier accidentally breaks a dish in a china shop, that soldier may not be held liable under Article 139 unless additional facts prove that the act was willful.

*b. Personal injuries, wrongful death, and theft of services.* Article 139 is designed to compensate victims only for loss of or damage to property. Hence, claims for personal injury and wrongful death are not cognizable and are treated elsewhere. Similarly, claims for theft of services are not cognizable under Article 139.

*c. Scope of employment.* Soldiers may not be held liable under Article 139 for acts or omissions which are made within the scope of their employment. For example, a soldier employed by the military police whose duty requires breaking a lock to impound evidence may not be held liable under Article 139 for damage to the lock.

*d. Reserve component personnel while not subject to the UCMJ.* Claims resulting from the conduct of Reserve component personnel who are not subject to the UCMJ at the time of the offense are excluded from coverage under Article 139.

*e. Subrogated (third party) claims.* Subrogated claims are those in which a third party, such as an insurance company, asserts the claimant's rights. Article 139 will not be used to pay subrogated claims, including those brought by insurers. However, an insurance company may be a proper claimant if its property has been willfully damaged or wrongfully taken. For example, when an insurance company has made a settlement payment to a soldier who has filed a fraudulent insurance claim, the company is a proper party claimant.

*f. Contractual and fiduciary disputes.* Article 139 is not designed to be a mechanism for debt collection. Claims resulting from a breach of a contractual or fiduciary duty are not actionable unless the agreement is merely a cloak for an intent to steal. A soldier who falls behind on the repayment of a loan may not be held liable under Article 139 unless the soldier obtained the loan as a pretense to steal money and did not intend to repay it.

*g. Claims for consequential damages.* Consequential damages flow indirectly from the wrongful act. They differ from direct damages. Article 139 may be used to recover only direct damages from the wrongdoer.

(1) The costs of telephone calls, mileage, postage, copies, or attorneys' fees incurred to pursue a claim under Article 139 are consequential damages and are not compensable.

(2) Where expenses are necessary to repair a damaged item, such as the cost of moving it to a repair shop (drayage), such costs directly result from the soldier's willful damage and are compensable as direct damages.

(3) The cost of a rental car may be considered direct, compensable damage when a soldier steals or willfully damages a claimant's privately owned vehicle (POV). Such costs, such as rental of a vehicle comparable in value to the claimant's POV, must be reasonable.

#### **9-6. Limitations on assessments**

Limitations on the amount of money that may be paid to a claimant depend on the level of authority at which the claim is handled. The Special Court-Martial Convening Authority (SPCMCA) with jurisdiction over the claim may approve any claim for a single incident up to \$5,000. The General Court-Martial Convening Authority (GCMCA) or designee may approve any claim up to \$10,000. Only TJAG, TAJAG and the Commander, USARCS, or designee may approve claims for more than \$10,000. If the claim is within the GCMCA's payment limitation and the soldier whose pay is assessed is prosecuted in an action arising out of the same incident as the Article 139 claim, special considerations apply. Under Rule for Court-Martial (RCM) 1107, the convening authority in a general court-martial shall take action on the sentence and findings of the court-martial unless impracticable. See paragraph 9-7 h (2) for application of RCM 1107.

#### **9-7. Procedure**

*a. Time limitations on submission of a claim.* A claim must be submitted within 90 days of the incident that gave rise to it, unless good cause for the delay is shown. The SPCMCA acting on the claim determines what constitutes good cause. Generally, a person who is not aware of Article 139 or does not know the identity of the offender has good cause for delay in submitting a claim.

*b. Form of a claim.* A claim may be submitted orally, but it must be reduced to writing and signed by the claimant within ten calendar days. Anyone with knowledge of the Article 139 process should encourage the claimant to do this promptly. An oral claim that is not reduced to writing within ten calendar days may be dismissed. The claim must also seek a definite amount. An amount stated in a foreign currency must be converted to U.S. dollars. The claims judge advocate (CJA) or claims attorney should encourage claimants to follow the sample set forth at figure 9-4, but claimants are not required to do so.

*c. Action on receipt of a claim.* Any Army officer who receives an Article 139 complaint must forward it to the SPCMCA having UCMJ jurisdiction over the alleged offender or offenders within two working days. The SPCMCA is a commander authorized to convene a special court-martial under the UCMJ and Army regulations, regardless of whether the exercise of such jurisdiction has been withheld. If more than one SPCMCA may have authority over the alleged offender or if the claim is against a member of

another military service, then special rules apply. If all SPCMCA's who have potential jurisdiction over the alleged offender or offenders fall under the command of a single GCMCA, the CJA or claims attorney should forward the claim to that GCMCA, who will designate one of the SPCMCA's to process the claim. If the SPCMCA's who have potential jurisdiction fall under the command of different GCMCA's, then the SPCMCA whose headquarters is closest to the place where the incident giving rise to the claim occurred has jurisdiction. Finally, if the claim is brought against a member of one of the other military services, then it should be forwarded to the commander of the nearest major command of the relevant military service equivalent to a major Army command (MACOM).

*d. Initial action by the SPCMCA.* If the claim appears cognizable, the SPCMCA will appoint an investigating officer (IO) (see sample appointment set forth at [figure 9-5](#)) to conduct an investigation using the informal procedures of AR 27-20, [chapter 9](#), and AR 15-6, [chapter 4](#), within four working days of receiving the claim. If the claim does not appear cognizable, the SPCMCA may refer it for legal review within four days of receipt. If after legal review, the SPCMCA determines that the claim is not cognizable, he or she may disapprove the claim without appointing an IO.

*e. Expediting payment through Personnel Claims Act procedures.* There are times when a delayed payment may result in hardship to a claimant. If the Article 139 claim resolution will be unduly delayed, the area claims office may process the claim under the Personnel Claims Act (31 USC 3721) pursuant to AR 27-20, [chapter 11](#), if it is otherwise cognizable. If claims personnel handle the claim under chapter 11, then the claims office must inform the claimant of the responsibility to repay to the Government any overpayment should the Article 139 claim later succeed. Payment of an Article 139 claim under Chapter 11 should be approved only when necessary to prevent financial hardship to the claimant, not merely to avoid an inconvenience.

*f. Action by the investigating officer.* Within 10 working days of appointment, the IO will complete a claims investigation. The SPCMCA may extend this ten-day period for good cause. The CJA or claims attorney should advise the IO before the investigation begins on the scope of the investigation, procedural steps to follow and restrictions on evidence. The IO will promptly notify the soldier against whom the claim has been brought (see sample letter set forth at [figure 9-6](#)). In addition, the IO will submit findings of fact and a recommendation based on those findings to the SPCMCA through the claims office and will provide the soldier against whom the claim is brought with a copy of such findings and recommendations so the soldier has an opportunity to respond. The IO should contact the CJA or claims attorney for guidance on legal and procedural questions.

(1) *Generally.* The IO should interview all available witnesses and obtain copies of police reports and other relevant documents. Evidence need not be in the form of sworn statements nor must it be admissible under the rules of evidence applicable in a court of law (see AR 15-6, [para 3-6](#)). For example, the IO may accept unsworn statements or consider hearsay evidence. When taking oral evidence in person or over the telephone, the IO should contemporaneously summarize the substance of the conversation in a

memorandum for record. The IO should physically inspect all damaged items claimed and record findings in the same memorandum.

(2) *Restrictions on evidence.* Although the standards of evidence that apply to this administrative procedure are flexible and permissive, there are some restrictions on the questions that the IO may ask and the evidence that the IO may use. The IO should consult the CJA or claims attorney before asking a witness or suspected offender any question that may be impermissible. When interviewing a soldier suspected of an offense, the IO must warn the suspect of his or her rights against self-incrimination under Article 31, UCMJ. The IO should use DA Form 3881 (Rights Warning Procedure/Waiver Certificate) for this purpose. The IO should not consider any of the following evidence unless the criteria permitting its use are met:

(a) *Privileged communications.* Information discovered through an Inspector General's (IG) report or from communications between a soldier and that soldier's attorney, spouse, or clergyman (if the latter were made either as part of a formal religious act, such as the rite of confession in the Catholic Church, or as a matter of conscience) is not admissible (AR 15-6, para 3-6c(1) ).

(b) *Polygraph test results.* The results or taking of, or the refusal to take, a polygraph (lie detector) test will not be considered without the consent of the person involved in such a test. (AR 15-6, para 3-6c(2) ).

(c) *Involuntary admissions.* Confessions or admissions obtained by unlawful coercion or inducement likely to affect their truthfulness are not admissible (AR 15-6, para 3-6c(6) ).

(d) *Bad faith unlawful searches.* If members of the Armed Forces acting in their official capacity (such as military police acting in furtherance of their official duties) conduct or direct a search they know is unlawful under the Fourth Amendment of the U.S. Constitution, as applied to the military community, evidence obtained as a result of that search may not be accepted or considered against any respondent whose personal rights were violated by the search. Such evidence is acceptable only if the IO reasonably determines that the evidence would inevitably have been discovered. In all other cases, the IO may accept evidence obtained as a result of any search or inspection, even if it has been or would be ruled inadmissible in a criminal proceeding (AR 15-6, para 3-6c(7) ). If uncertain about the admissibility of any evidence, the IO should consult the CJA or claims attorney conducting the legal review of the claim.

(3) *Standard of proof.* A preponderance of the evidence is necessary for a finding of pecuniary liability under Article 139. This means that, to recommend liability, the IO must conclude that it is more likely than not that the claim is valid. The IO should base this judgment on the weight of the admissible evidence gathered during the investigation.

(4) *Valuation of a claimant's loss.* Normally, the measure of a loss is either the repair cost or the depreciated replacement cost for the same or a similar item. Most items depreciate at rates that depend on their age and condition. The Military Allowance List

Depreciation Guide may (but is not required to) be used to determine depreciated replacement cost.

(5) *Findings and recommendation.* The IO should submit findings and recommendation to the SPCMCA on DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers) and will address each of the following conditions for payment:

(a) Whether the claim is brought by a proper claimant, in writing, and seeks a definite sum.

(b) Whether the claim is brought within 90 days of the incident that gave rise to it, or the claimant has shown good cause for the delay.

(c) Whether the claim seeks compensation for property belonging to the claimant that was wrongfully taken or willfully damaged by a member or members of the U.S. Army.

(d) Whether the claim is meritorious in a specific amount.

(6) *Claims against more than one soldier.* If the claim is brought against more than one soldier, the IO will make a determination with respect to each named soldier. Several soldiers may be present when property is wrongfully taken or willfully damaged. If the IO determines that one or more of them committed the act but cannot determine the identity, the IO may recommend that equal amounts be assessed against each soldier who was present. If a soldier is in a no pay due status, the Defense Accounting officer will notify the approval authority.

(7) *Processing claims against soldiers absent without leave (AWOL).* If a soldier found liable pursuant to Article 139 is AWOL, and thus cannot be notified of the impending assessment, then the approval authority may act on the claim in the soldier's absence. If the claim against the AWOL soldier is approved, the approval authority will ensure that a copy of the claim and a memorandum authorizing a pay assessment against the soldier is transmitted to the servicing Defense Accounting Office (DAO) to process an offset against the soldier's pay account.

*g. Legal review by the CJA or claims attorney.* Within five working days (which the SPCMCA may extend for good cause), the CJA or claims attorney will review the IO's findings and recommendation and will advise the SPCMCA whether they are legally sufficient and supported by the evidence (see figure 9-7 for a sample review memorandum). If they are not, the CJA or claims attorney will return the claim to the IO for additional findings. The CJA or claims attorney may review the findings and recommendation even after providing earlier legal or procedural advice to the IO. The CJA or claims attorney will prepare letters to the claimant and to the soldier against whom the claim is brought for signature by the SPCMCA (see figures 9-8 and 9-9 for samples of such letters). If pecuniary liability is recommended and the claim is legally sufficient, the CJA or claims attorney will prepare an action for the SPCMCA's signature (sample shown at figure 9-10), directing the appropriate DAO to withhold pay from the soldier for disbursement to the claimant.

*h. Final action by the convening authority.*

(1) *Action at the SPCMCA level.* The SPCMCA may disapprove the claim regardless of the amount or, if the findings and recommendation are legally sufficient, approve it in an amount equal to or less than the amount recommended by the IO for claims of \$5,000 or less. The SPCMCA will notify both the soldier and claimant in writing of the decision and of their rights to request reconsideration. The SPCMCA will then delay final action on the claim for ten working days pending receipt of a request for reconsideration unless this delay will result in an injustice (such as the discharge of the liable soldier from active duty and thus the Army's inability to disburse funds by pay assessment). If either party requests reconsideration within that time, the SPCMCA shall reconsider the claim within five days. If the SPCMCA approves a claim against a soldier subject to his or her jurisdiction, the SPCMCA will direct the appropriate DAO to withhold pay from that soldier in an amount up to \$5,000 per claim and to pay that sum to the claimant. The SPCMCA should then return the claim file to the claims office for disposition.

(a) *Soldiers not subject to the SPCMCA's jurisdiction.* For soldiers not subject to the SPCMCA's jurisdiction, the SPCMCA will forward a copy of the claim to the SPCMCA who does exercise jurisdiction. This SPCMCA is bound by the determination made by the first SPCMCA and will direct the appropriate DAO to withhold pay from that soldier in an amount up to \$5,000 and pay it to the claimant.

(b) *Assessments in excess of \$5,000.* If the IO recommends an assessment in excess of \$5,000 and the SPCMCA concurs, the SPCMCA will forward the claim to the field claims office for legal review. After completing a review for legal sufficiency, the CJA or claims attorney will forward the file to the head of the area claims office. In most cases, the head of the area claims office will also be the GCMCA's SJA.

(2) *Action at the GCMCA level.* Within five working days of receipt of the claim, the head of the area claims office will review the claim for legal sufficiency and determine whether or not action by the GCMCA on the claim would interfere with the GCMCA's obligations under RCM 1107. The GCMCA's authority may be compromised if the GCMCA has a predetermined view of the outcome of a case. If the head of the area claims office (usually the GCMCA's SJA) determines an actual conflict exists, that officer, on the GCMCA's behalf, will forward the claim with an explanation of the problem to the Commander, USARCS, for final review. (See AR 27-20, para 9-6a(2)(b))). If a conflict of interest under RCM 1107 does not exist, then the GCMCA shall disapprove or approve the claim in the amount equal to or less than the amount recommended by the IO, up to \$10,000, within five working days. The GCMCA will notify the soldier and the claimant of the decision in writing and of their rights to request reconsideration. The GCMCA will postpone final action for ten working days to allow either party to request reconsideration. If such a request is received within that time, the GCMCA has five working days from the date of receipt to reconsider the claim. If deciding to approve the claim in whole or in part, the GCMCA will then take final action by directing the appropriate DAO to withhold an amount up to \$10,000 from the soldier's pay. If the GCMCA determines that the claimant is entitled to an amount in excess of \$10,000, then the GCMCA will approve the claim for \$10,000 and forward the

claim, along with the GCMCA's recommendation, to the Commander, USARCS, for final action. If, as a result of reconsideration, the GCMCA disapproves the claim, the GCMCA will take final action by notifying, in writing, the parties of the decision.

*(3) Final action by USARCS.* If determining that a claim in excess of \$10,000 should be approved, the Commander, USARCS, or designee, will send a memorandum to the GCMCA approving a cumulative assessment in an amount over \$10,000 and authorizing the appropriate DAO to withhold additional monies from the offending soldier's pay and to make restitution to the victim.

*i. Assessment.* Upon receipt of the Article 139 assessment, the appropriate DAO will withhold the amount directed by the approval authority. The assessment is binding on the DAO. It is not subject to appeal. However, the assessment is subject to the limitations set forth in regulations governing military personnel pay administration. If the DAO to whom the assessment is directed cannot withhold the soldier's pay because it does not have the soldier's pay record or the soldier is in a no-pay-due status, it must promptly notify the approval authority of this fact in writing.

*j. Post settlement action.* After action on the claim is completed, the servicing claims office will retain the original claim file and forward a complete copy to the SPCMCA. The claim file will be filed locally, per AR 25-400-2. If a personnel claim is filed for the same incident under AR 27-20, chapter 11, the claims office will incorporate a copy of the Article 139 claim into the chapter 11, claim file.

*k. Remission of indebtedness.* By statute and regulation, an enlisted soldier is entitled to seek remission of a debt which is owed to the U.S. government. In an Article 139 claim, the debt is owed to the soldier's victim, not to the United States; therefore, remission of indebtedness procedures do not apply to Article 139 claims. A soldier may not be relieved of a financial obligation arising under Article 139 through the remission of indebtedness process.

#### **9-8. Reconsideration**

Upon receipt of a request for reconsideration by either the claimant or a soldier who has been assessed pecuniary liability, the approval authority or successor in command will direct the legal advisor to provide a recommendation. If the request raises an issue of fact, the approval authority may appoint an IO to make further findings of fact. If the approval authority contemplates modifying the decision, he or she shall provide all parties to the claim with notice and an opportunity to respond. The approval authority will record the basis upon which the decision is modified and notify all parties.

*a. Action by the original approval authority.* The approval authority should not modify a decision on a request submitted more than ten days after the original decision was issued except on the basis of newly discovered evidence, fraud, or obvious error of fact or law.

*b. Action by a successor in command.* A successor in command to the original approval authority may not modify a decision on any request except on the basis of newly discovered evidence, fraud, or error of fact or law apparent from the file.

*c. Disposition of files.* The approval authority will ensure that a copy of the reconsideration is filed with the claim.

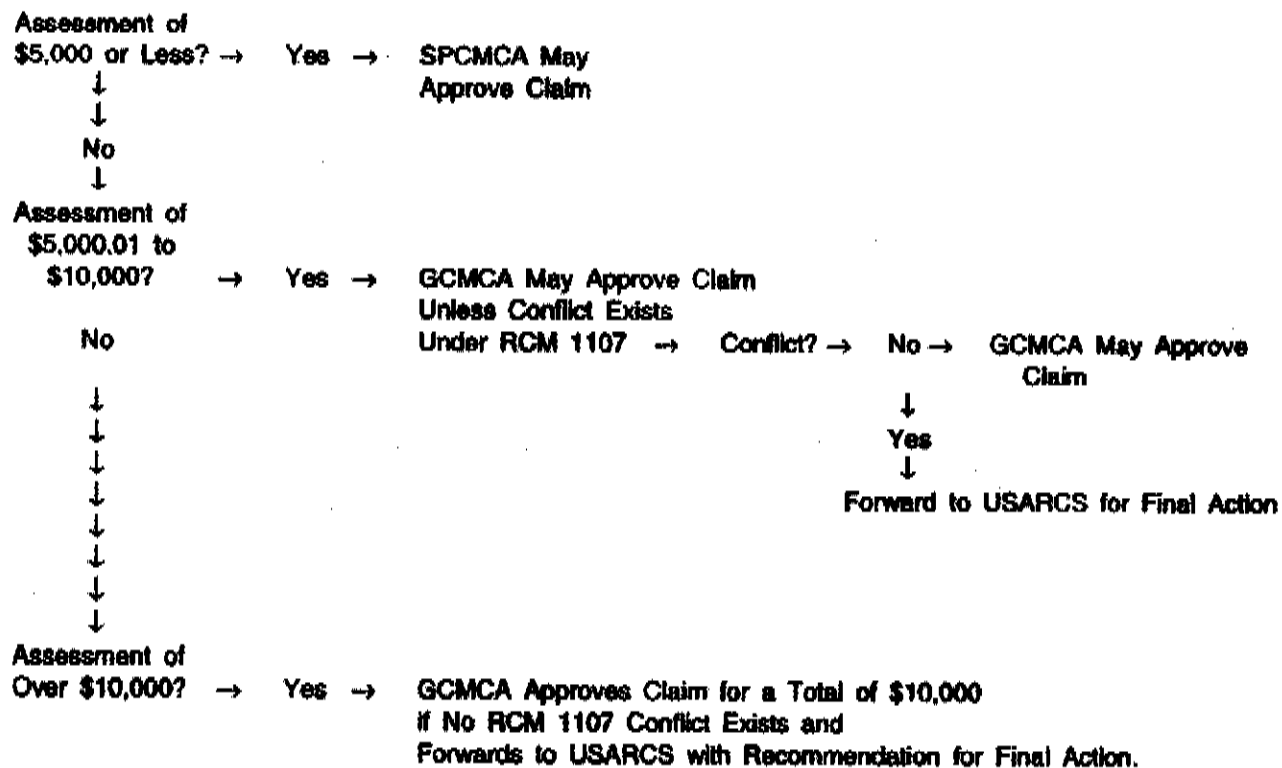
**9-9. Additional CJA and claims attorney responsibilities**

In addition to conducting legal review of Article 139 claims, the CJA or claims attorney is responsible for —

*a. Forwarding copies of completed actions to USARCS.* Within ten working days of final action on the claim, the CJA or claims attorney will prepare a cover sheet for the claim and forward it, along with a copy of the claim, to the Commander, USARCS, ATTN: JACS-PC. The cover sheet will state the claimant's name, the offender's name, the convening authority, the amount of the assessment, the date approved or disapproved and, if applicable, whether an additional assessment by USARCS is recommended. The CJA or claims attorney must also state whether DAO action was completed if pecuniary liability was recommended.

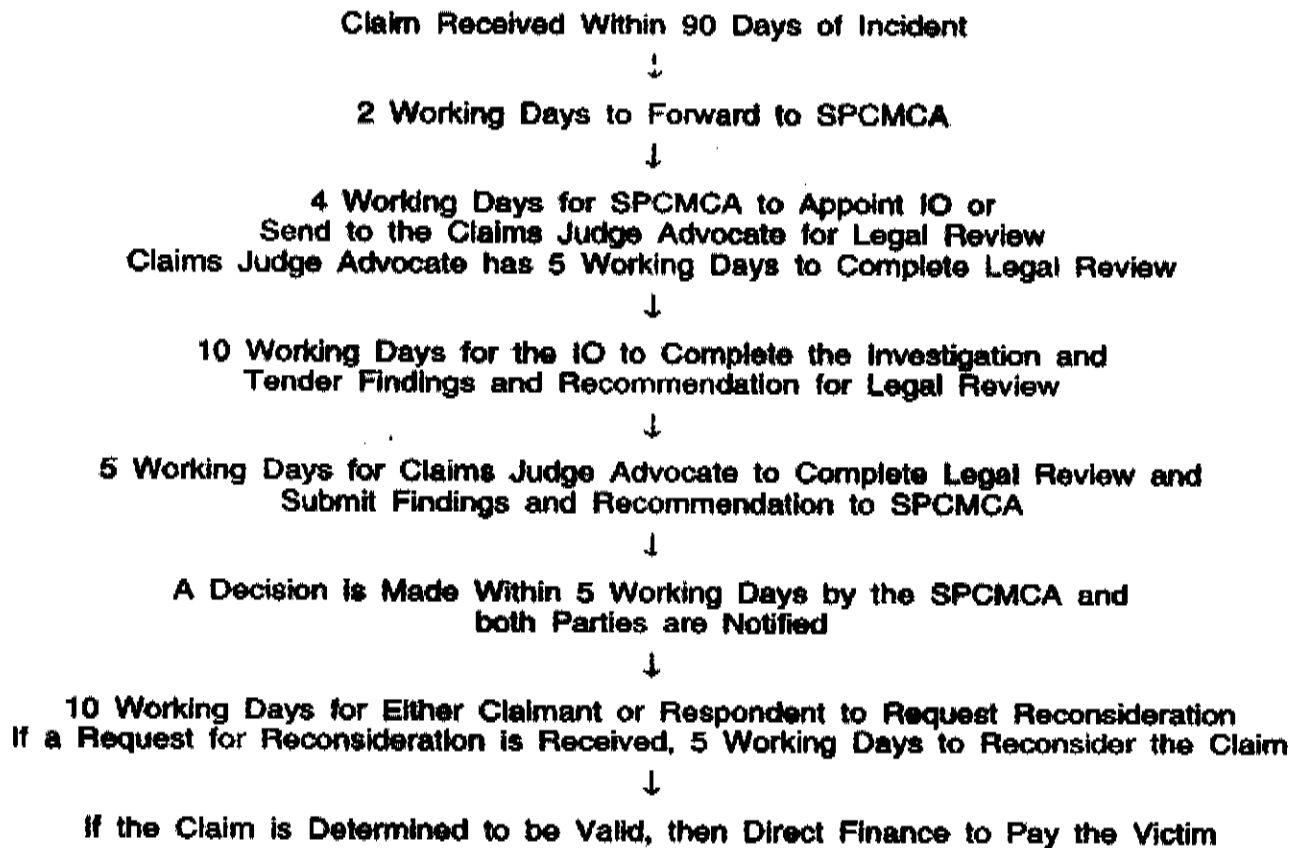
*b. Monitoring time requirements.* The CJA or claims attorney will maintain an Article 139 log and monitor time requirements ("suspenses" ) on pending Article 139 claims, acting to ensure that they are met. Timely completion of Article 139 actions is essential since delays may prevent proper assessment against an offender's pay account. If the offender is separated from active duty it may be impossible to collect anything from his or her pay account. If the offender is tried by court-martial any resulting forfeitures may also preclude proper assessments.

*c. Publicizing the Article 139 program.* The CJA or claims attorney has a duty to publicize the Article 139 program to commanders, soldiers and the general public. Methods of disseminating Article 139 information include publishing articles, ensuring that attorneys involved in legal assistance and military justice know about the Article 139 process so they can advise victims and, finally, teaching Article 139 procedures in Army legal classes.



**Figure 9-1. Liability forwarding flow chart, Article 139, UCMJ**

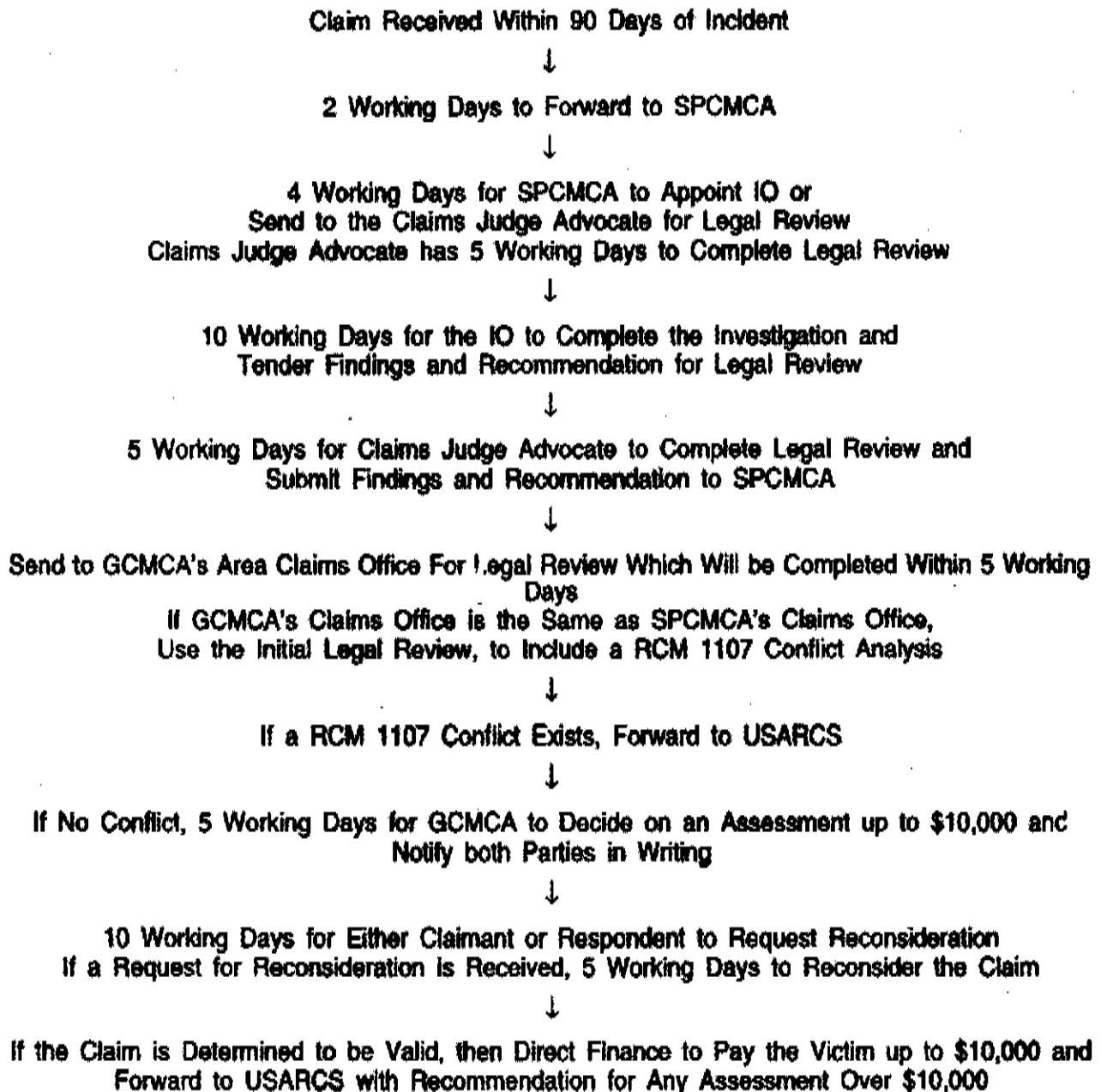
### **Claims Time Line**



**Figure 9-2. Processing a claim for less than \$5,000, Article 139, UCMJ**

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### **Claims Time Line**



**Figure 9-3. Processing a claim for more than \$5,000, Article 139, UCMJ**

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NAME:

DATE:

TELEPHONE NUMBER:

ADDRESS:

SSN:

Pursuant to Article 139, UCMJ, and AR 27-20, chapter 9, I state that on (date), (name) of (unit) wrongfully took/willfully damaged personal property of mine. I request that you assess his/her pay in the amount of (amount) and pay that sum to me.

On the back of this form as part of my claim, I have listed in detail the facts and circumstances and described the property lost or damaged, including the date of purchase, the purchase price, and the replacement or repair cost, and provided the names and addresses of any witnesses.

*(signature of claimant)*

#### REQUIRED ACTION UPON RECEIPT OF THIS CLAIM

The Commander exercising special court-martial convening authority over the soldier against whom the claim is made will appoint an officer to investigate the claim in accordance with AR 27-20, paragraph 9-7d, within 4 working days. Any other commander or subordinate receiving this claim will forward it to that commander exercising special court-martial convening authority over the soldier against whom the claim is made in accordance with AR 27-20, paragraph 9-7c, within 2 working days. Any questions concerning this claim should be referred to the Office of the Staff Judge Advocate.

#### DATA REQUIRED BY THE PRIVACY ACT OF 1974 (5 USC 552a)

AUTHORITY: 10 USC 939.

PRINCIPAL PURPOSE: Investigation and processing of claims.

ROUTINE USES: Information is principally used to provide a legal basis for the administrative settlement of a claim against a soldier for property willfully destroyed or wrongfully taken. The SSN is used to ensure correct identification of a claimant to ensure payment to the proper claimant.

MANDATORY OR VOLUNTARY DISCLOSURE AND EFFECT ON INDIVIDUALS NOT PROVIDING INFORMATION: Disclosure of information is voluntary. Failure to provide information substantiating a claim will delay action and may result in denial.

**Figure 9-4. Format for claim for personal property wrongfully taken or willfully damaged by a member of the armed forces, Article 139, UCMJ**

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**(Letterhead)**

S: 15 April 1997

ABCD-EFG (27-20)

1 April 1997

MEMORANDUM FOR COMMANDER, 43RD MAINTENANCE BATTALION, ATTN: OPQR-STU (CPT DUDLEY),  
CAMP JENKINS, CA 20755-1111

SUBJECT: Appointment of Investigating Officer, Article 139 Claim of Specialist  
Benjamin Compson

1. Effective this date, you are appointed as an investigating officer pursuant to AR 15-6 and AR 27-20, chapter 9, to investigate the claim filed by Specialist Benjamin Compson against Corporal Leslie Burden. You will notify Corporal Burden of the claim, and using informal procedures, you will determine whether the claim is cognizable and meritorious under the provisions of Article 139, UCMJ, and if cognizable, the amount of damages.
2. Prior to beginning your investigation, you will report to the Office of the Staff Judge Advocate for an initial briefing. This appointment takes precedence over other duties.
3. Within 10 working days, you will submit findings and a recommendation on DA Form 1574 to this headquarters through the Office of the Staff Judge Advocate and will provide Corporal Burden with a copy. If you require additional time to complete your investigation, you will contact this headquarters for authorization.

FOR THE COMMANDER:

R. PETER MASTERTON  
CPT, AG  
Adjutant

**Figure 9-5. Format for claim for personal property wrongfully taken or willfully  
damaged by a member of the armed forces, Article 139, UCMJ**

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(Letterhead)

April 1, 1997

43rd Maintenance Battalion

SUBJECT: Article 139 Claim of Specialist Benjamin Compson

Corporal Leslie Burden  
Headquarters and Headquarters Company  
U.S. Army Garrison  
Camp Jenkins, California 20755-2222

Dear Corporal Burden:

By order of the Convening Authority, Colonel John Nolan, I have been appointed to investigate a claim in the amount of \$197.50 filed against you pursuant to Article 139, Uniform Code of Military Justice, by Specialist Benjamin Compson, Company A, 441st S and T Battalion. Specialist Compson alleges that on the night of March 1, 1997, you entered his barracks room and wrongfully took his Sansui cassette deck.

This action is administrative in nature and is independent of any other administrative or criminal action that may be taken against you as a result of this incident. If, as a result of my investigation, Colonel Nolan determines that Specialist Compson's claim is cognizable and meritorious under the provisions of Article 139, he will direct that pay be withheld from you and used to compensate Specialist Compson.

Within five working days of the date of this letter, please provide me with any statement you wish to make concerning the incident or with the names of any witnesses you wish me to contact. You may make your statement to me either orally or in writing. However, realize that any statement you make would not be privileged and may be used against you in a court of law. You may wish to consult an attorney. You do not have to make a statement.

I anticipate completing this investigation within 10 working days. At the conclusion of my investigation, I will provide you with a copy of my findings and recommendation. You will be informed of Colonel Nolan's decision.

Should you pay Specialist Compson in full, I will terminate this investigation at that time.

Sincerely,

Donna J. Dudley  
Captain, U.S. Army  
Investigating Officer

**Figure 9-6. Sample notification letter, Article 139, UCMJ**

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(Letterhead)

IJKL-MNO (27-20)

15 April 1997

MEMORANDUM FOR COMMANDER, U.S. ARMY GARRISON AND CAMP JENKINS, ATTN: ABCD-EFG  
(CPT MASTERTON), CAMP JENKINS, CA 20755-2530

SUBJECT: Legal Review, Article 139 Claim of Specialist Benjamin Compson

1. In accordance with AR 27-20, paragraph 9-7, I have reviewed the investigating officer's findings and recommendation for legal sufficiency.
2. I have concluded that the findings and recommendation are legally sufficient and supported by the evidence, and that there has been substantial compliance with the provisions of Article 139, UCMJ; AR 27-20, chapter 9; and AR 15-6. I find that the claim did not result from negligence and that the property was *(wrongfully taken) (willfully damaged)* by a member or members of the U.S. Army.
3. If you concur in the investigating officer's findings and recommendation, please sign the letters at Tab A.

Encl

PAUL D. METREY  
CPT, JA  
Claims Judge Advocate

**Figure 9-7. Sample legal review memorandum, Article 139, UCMJ**

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(Letterhead)

April 18, 1997

Headquarters, U.S. Army Garrison Camp Jenkins

SUBJECT: Article 139 Claim of Specialist Benjamin Compson

Specialist Benjamin Compson  
Company A, 441st S and T Battalion  
Camp Jenkins, California 20755-5360

Dear Specialist Compson:

I have determined that your Article 139, UCMJ, claim against Corporal Leslie Burden is cognizable and meritorious in the amount of \$175.95 after the application of normal depreciation on your cassette deck.

You may request in writing that I reconsider my decision. Such request must set forth your basis for requesting reconsideration and be submitted within 10 working days of the date of this letter. Unless either you or Corporal Burden request reconsideration, I will direct that this amount be withheld from her pay and paid to you at that time.

Sincerely,

John H. Nolan III  
Colonel, U.S. Army  
Commanding Officer

Figure 9-8. Sample notification letter to claimant of results of investigation, Article 139, UCMJ

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(Letterhead)

April 18, 1997

Headquarters, U.S. Army Garrison Camp Jenkins

SUBJECT: Article 139 Claim of Specialist Benjamin Compson

Corporal Leslie Burden  
Headquarters and Headquarters Company  
U.S. Army Garrison  
Camp Jenkins, California 20755-2222

Dear Corporal Burden:

I have determined that you wrongfully took property belonging to Specialist Benjamin Compson and that his Article 139, UCMJ, claim against you is cognizable and meritorious in the amount of \$175.95 after the application of normal depreciation.

You may request in writing that I reconsider my decision. Such request must set forth your basis for requesting reconsideration and be submitted within 10 days of the date of this letter. Unless either you or Specialist Compson request reconsideration, I will direct that \$175.95 be withheld from your pay and paid to Specialist Compson at that time.

Sincerely,

John H. Nolan III  
Colonel, U.S. Army  
Commanding

**Figure 9-9. Sample notification letter to an individual wrongdoer of the results of an investigation, Article 139, UCMJ**

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30 April 1997

MEMORANDUM FOR DISBURSING OFFICER, USA FINANCE AND ACCOUNTING OFFICE, ATTN: NOPQ-RST  
(CPT BRYAN), CAMP JENKINS, CA 20755-8888

SUBJECT: Article 139 Claim of Specialist Benjamin Compson

1. I have determined that the claim submitted by Specialist Benjamin Compson, 433-54-4334, 441st S and T Battalion, is cognizable and meritorious under the provisions of Article 139, UCMJ, and AR 27-20, chapter 9, in the amount of \$175.95. I have assessed the pay of Corporal Leslie Burden, 566-56-5665, Headquarters and Headquarters Company, U.S. Army Garrison, Camp Jenkins, California 20755-2222, in that amount.

2. Pursuant to Military Pay and Allowances Entitlements Manual, DOD 7000.14R, paragraph 70702 and table 7-7-5, you are directed to withhold \$175.95 from the pay of Corporal Burden and pay it to Specialist Compson. Notify CPT Metrey, Office of the Staff Judge Advocate, when you have completed this action.

JOHN H. NOLAN III  
COL, IN  
Commanding

**Figure 9-10. Sample memorandum to disbursing officer, Article 139, UCMJ**

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# **ENCLOSURE 4**

## **Chapter 4, AR 15-6**

# **Chapter 4**

## **Informal Investigations and Boards of Officers**

### **4-1. Composition**

Informal procedures may be used by a single investigating officer or by a board of two or more members. (One officer is not designated a board unless procedures are formal.) All members are voting members. Appointment of advisory members or a legal advisor is unnecessary because persons with special expertise may be consulted informally whenever desired. The senior member present acts as president. There is no recorder. The president prescribes the duties of each member. A quorum is required only when voting on findings and recommendations. (See para 3-12.)

### **4-2. Procedure**

An informal investigation or board may use whatever method it finds most efficient and effective for acquiring information. (See chap 3 for general guidance.) A board may divide witnesses, issues, or evidentiary aspects of the inquiry among its members for individual investigation and development, holding no collective meeting until ready to review all the information collected. Although witnesses may be called to present formal testimony, information also may be obtained by personal interview, correspondence, telephone inquiry, or other informal means.

### **4-3. Interested persons**

Informal procedures are not intended to provide a hearing for persons who may have an interest in the subject of the investigation or board. No respondents will be designated and no one is entitled to the rights of a respondent. The investigating officer or board may still make any relevant findings or recommendations, including those adverse to an individual or individuals.